

TREASURY - TAXATION  
DIVISION OF TAXATION

Gross Income Tax  
Gambling Winnings Subject to Withholding  
Proposed Amendment: N.J.A.C. 18:35-7.5

Authorized by: Robert K. Thompson, Director Division of Taxation  
Authority: N.J.S.A. 54A:9-8.2, 54A:9-17(a) and 54:50-1.  
Calendar Reference: See Summary below for explanation of rulemaking calendar exception.  
Proposal Number: PRN 2004

Submit comments by **April 17, 2004** to:  
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The agency proposal follows:

### Summary

N.J.A.C. 18:35-7.5 describes the withholding requirements for payors of gambling winnings as required under N.J.S.A. 54A:7-1(c). New Jersey's current rule requires withholdings on gambling winnings if the proceeds exceed \$1,000.00 and does not impose withholding on slot machine winnings.

Both N.J.S.A. 54A:7-1(c) and N.J.A.C. 18:35-7.5, contain language that conforms the New Jersey income tax withholding treatment of gambling winnings to the Federal income tax withholding provisions under subsection (q) of section 3402 of the federal Internal Revenue Code of 1986.

The purpose of federal income tax withholding conformity is to provide payors of gambling winnings completing Federal Form W-2Gs with the administrative convenience having the same withholding requirements for federal and State purposes.

Therefore, the rule, as amended, updates the withholding requirement on gambling winnings proceeds of more than \$1,000.00 to \$5,000.00 in accordance with the current Federal income tax withholding requirement requiring withholding on proceeds of gambling winnings in excess of \$5,000.00 rather than the previous ceiling of \$1,000.00. The amended rule also imposes a withholding requirement on the winnings from slot machine, Keno and bingo games that conforms to the amount required to be reported on Form W-2G for federal income tax purposes on amounts of \$1,200.00 (\$1,500.00 for Keno) or more.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is exempt from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The proposed amendments explain the withholding requirements of N.J.S.A. 54A:7.1(c) for payors of New Jersey gambling winnings, and the amended rule updates the threshold for withholding from \$1,000.00 to \$5,000.00 to conform to the federal income tax withholding threshold. This proposal will provide payors of gambling winnings with uniform reporting and withholding procedures so as to eliminate confusion about state and federal requirements and to ease administration. Also, since the proceeds of gambling winnings are taxable in New Jersey under N.J.S.A. 54A:5-1(g), the rule also establishes a requirement of withholding on the winnings from slot machines, Keno and bingo games. Withholding on slot machine, Keno and bingo games will relieve the taxpayer from having to make estimated tax payments.

#### Economic Impact

The proposed amendment raising the threshold for withholding from \$1,000.00 to \$5,000.00 in conformity with the federal income tax withholding thresholds will save time and paperwork for payors of gambling winnings. Also, in view of the New Jersey income tax withholding requirement on slot machine, Keno and bingo winnings, amounts of \$1,200.00 (\$1,500.00 for Keno) or more will be reported to New Jersey.

### Federal Standards Statement

A Federal Standards analysis is not required because the rulemaking authority is granted by the operative provisions of the Gross Income Tax Law, N.J.S.A. 54A:1-1 et seq. and is not subject to any Federal requirements or standards.

### Jobs Impact

The proposed amendments are not expected to have an impact on the creation or loss of jobs in the State. The proposed amendments only affect the withholding requirements of the Gross Income Tax.

### Agricultural Industry Impact

The proposed amendments will not affect the agricultural industry in the State since the proposed amendments deal with the withholding requirements for payors of gambling winnings.

### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments impose withholding requirements on payors of New Jersey gambling winnings. Payors of gambling winnings in New Jersey are generally large gaming establishments, such as

the Atlantic City casinos. The proposed amendments will have no significant impact on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A.

52:14B-16 et seq. No exemptions from, or differentiation in, these requirements on large or small businesses was provided, since to do so would not have been in compliance with the applicable statutes.

#### Smart Growth Statement

The proposed amendments will not have an impact on the achievement of Smart Growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

#### 18:35-7.5 Gambling winnings subject to withholding

(a) Every payor of New Jersey gambling winnings which are subject to withholding, as defined in (d) below, shall deduct and withhold New Jersey gross income tax thereon in an amount equal to three percent of payments made to both New Jersey residents and nonresidents as defined in N.J.S.A. 54A:1-2(m) and (n). Such withholding shall be required in all instances, including withholding on slot machine, Keno and bingo game winnings, and wherein the payor of such winnings is required to withhold for Federal income tax purposes under subsection (q) of section 3402 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 3402), as amended.

(b) The tax imposed under N.J.S.A. 54A:7-1(c) and this section shall not apply:

1. With respect to the payment of winnings from the New Jersey Lottery, [; and
2. With respect to a payment of winnings from a slot machine, or a keno or bingo game.]

(c) Any person receiving a payment of New Jersey gambling winnings subject to withholding must furnish the payor a statement made under the penalties of perjury containing:

1. The name, address, and taxpayer identification (social security) number if the winner accompanied by a declaration that no other person is entitled to any portion of such payment; or
2. The name, address, and taxpayer identification (social security) number of the recipient and of every person entitled to any portion of such payment.

3. The requirement set forth in (c)1 and 2 above may be satisfied by providing the payor with a copy of Federal Form W-2G or 5754, whichever is applicable.

(d) New Jersey gambling winnings subject to withholding means any payment from:

1. A wager placed in a sweepstakes, wagering pool or lottery, other than the New Jersey Lottery, but only if the proceeds from the wager exceed [\$1,000] \$5,000.00; or

2. Any other wagering transaction, including but not limited to, a wagering transaction in a parimutuel pool with respect to horse races, but only if the proceeds from the wager:

i. Exceed [\$1,000] \$5,000.00; and

ii. Are at least 300 times as large as the amount of the wager; or

iii. Are slot machine or bingo game winnings of \$1,200.00 or more, or

iv. Are Keno winnings of \$1,500.00 or more.

3. If proceeds from a wager as set forth in (d)1 and 2 above qualify as winnings subject to withholding, then the total proceeds from the wager, and not merely amounts in excess of [\$1,000] \$5,000.00, are subject to withholding.

e. Proceeds from a wager is the amount paid with respect to a wager, less the amount of the wager. Amounts paid with respect to identical wagers are treated as paid with respect to a single wager for purposes of calculating the amount of proceeds from a wager.

1. In determining the amount paid with respect to a wager, proceeds which are not money shall be taken into account at the fair market value.

2. Periodic payments, including installment payments or payments which are to be made periodically for the life of a person, are aggregated for purposes of determining the proceeds from a wager. The aggregate amount of period payments to be made for a person's life shall be based on the person's life expectancy. For purposes of determining the amount subject to withholding, the first periodic payment shall be reduced by the amount of the wager.

(f) Payments to any person of winnings subject to withholding under this section shall be treated as if they are wages paid by an employer to an employee under the provisions of N.J.S.A. 54A:7-2 through N.J.S.A. 54A:7-7; provided, however, that such payments shall be considered gambling winnings for all other purposes under the Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.). Payor shall furnish a copy of Federal Form W-2G (or 5754) or any other substitute thereof, submitted federally, magnetically or otherwise, to the Director, Division of Taxation.



